TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934

No. 370

JUAN PEREZ CAMI, MUNICIPAL COMMISSIONER OF FINANCE, PETITIONER,

vs.

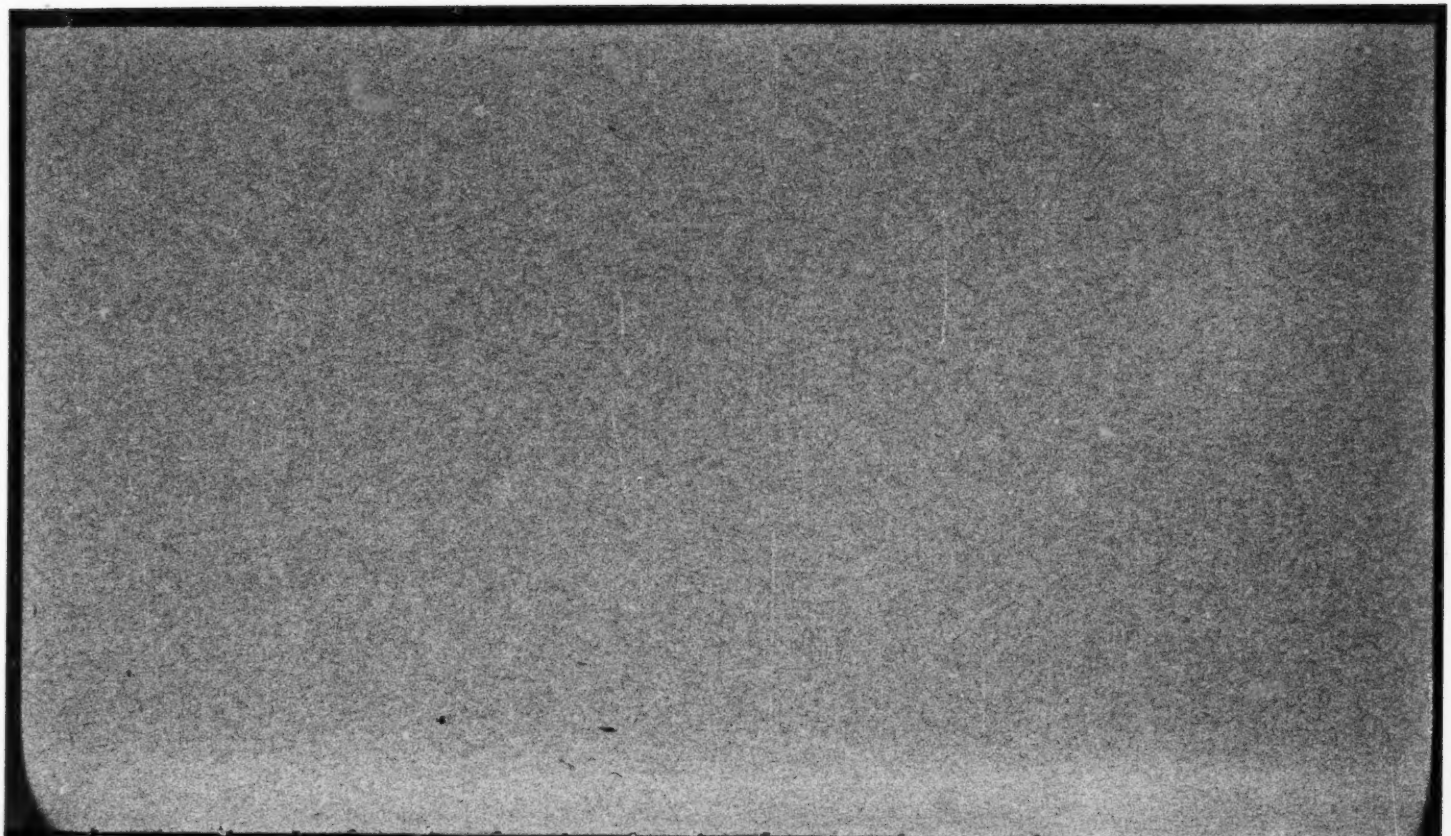
CENTRAL VICTORIA, LTD.

ON A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

PETITION FOR CERTIORARI FILED APRIL 10, 1934

CERTIORARI GRANTED JUNE 1, 1934

(30,397)



(30,297)

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[fol. 1] CAPTION—Omitted

IN DISTRICT COURT FOR THE JUDICIAL DISTRICT OF SAN JUAN, P. R., SECOND DIVISION

No. 2300

CENTRAL VICTORIA, LTD., Plaintiff,

v.

JUAN PEREZ CAMI, Municipal Commissioner of Finance of Carolina, Defendant

Action for an Injunction, etc.

PETITION FOR AN INJUNCTION—Filed March 17, 1921

Comes now the petitioner and by its undersigned attorney respectfully shows:

I. That on February 17, 1921, the Municipal Assembly of Carolina passed a municipal ordinance reading literally as follows:

"Municipal Government of Carolina.—Porto Rico.—Municipal Assembly.—Ordinance imposing a tax of ten cents on every hundredweight of Sugar manufactured in this municipality in order to meet the budgetary appropriations for the year 1921 to 1922. [fol. 2] * * * Whereas subdivision 4 of section 26 of the Municipal Law empowers the municipalities to levy taxes and excises of whatsoever nature. * * * Whereas this municipality is short of the necessary funds to meet its budgetary expenses for the fiscal year 1921-1922. * * * Now, therefore, be it resolved by the Municipal Assembly of Carolina, P. R. * * *

Sec. 1. That as and from July 1, 1921, and during the fiscal year 1921-1922, a tax of ten cents shall be imposed and collected by the Municipal Treasurer on every hundredweight of sugar manufactured in the Municipal District of Carolina, the collection of which shall conform to the memoranda furnished by the respective factories.

Sec. 2. The Municipal Commissioner of Finance is hereby authorized, either personally or by any of the employes of his department, to proceed at intervals to make investigations to ascertain whether the statements furnished by the manufacturers of sugar conform strictly to the number of hundredweights manufactured. * * *

Sec. 3. The collection of the aforesaid tax shall be made on any day of the months of February, April and June of the year 1922. The amounts so collected shall be used in the technical study of a scheme for the proposed establishment of communities by this munic-

ipality; for the erection of inexpensive school buildings and living quarters for teachers in the communities; for the acquisition of lands on which to form such communities, the organization thereof and of school farms.

"Sec. 4. Any person, association or corporation that by false or insidious propaganda or by any other unlawful or malicious means shall attempt to violate or should violate or be the cause of the violation, or shall attempt to delay or be the cause of any delay in the enforcement of any of the provisions of this ordinance, shall be liable to a minimum fine of from five to fifty dollars or imprisonment in jail for from five to fifteen days, or to both penalties at the [fol. 3] discretion of the court. * * *

Sec. 5. Any ordinance or resolution, or part thereof, in conflict herewith, is hereby repealed. * * *

Sec. 6. This ordinance, which is unanimously adopted by the members of the Municipal Assembly of this city in session assembled, shall begin to take effect twenty days after its publication in the ordinary way. * * * Approved this seventeenth day of February, 1921."

II. That by virtue of said ordinance the defendant, as and from July 1, 1921, intends to collect from the plaintiff the sum of ten cents on every hundredweight of sugar manufactured by the latter, and seeks to compel the complaining corporation to furnish a statement of its manufactured output showing the number of bags corresponding to the factory and the number corresponding to the cane growers (colonos); and, in general, to force the complaining corporation to comply with each and every provision of said municipal ordinance.

III. The complainant contends that the municipal ordinance referred to herein is null and void and without any legal force whatever, and that its enforcement against the complaining corporation constitutes an unlawful, oppressive and unjust act.

IV. That the ordinance to which this complaint refers is illegal and null for the following reasons:

1. Because the Municipal Assembly of Carolina has no power or authority to impose a special tax in cases other than those provided for by the Municipal Law.

2. Because the ordinance referred to herein is a surtax on the property assessable in the municipality, exceeding the one per cent allowed by law on the value of property.

3. Because the tax created by the ordinance herein referred to is tantamount to an export tax on sugar manufactured in the municipality of Carolina, and repugnant to the provisions of the Organic Act.

4. Because said ordinance is oppressive and unjust inasmuch as [fol. 4] it has been made with the intent and purpose of imposing a tax exclusively *an* the Central Victoria belonging to the complainant and situated in the municipal district of Carolina, without considering the cost of the production of sugar by said Central or the competitive conditions in the market, thereby placing the complaining association in a disadvantageous position in its relation to other sugar factories in Porto Rico.

5. Because said ordinance imposes a tax without establishing the basic value of the property on which it is levied.

6. Because this ordinance imposes a double tax on the property affected by the excise.

V. The said ordinance places the defendant in a position to cause irreparable injury to the plaintiff against which it has no speedy remedy in the ordinary process of law and would be unable to comply therewith.

Wherefore plaintiff prays the court to render judgment, after duly hearing the defendant, enjoining him personally, in his capacity of Municipal Commissioner of Finance of Carolina or through his agents or employes or any other person acting under him, from taking any steps having for their object the collection of said tax as imposed by the ordinance of February 17, 1921, subject-matter hereof, and muleting him with costs, disbursements and attorney fees in case of opposition.

Cay. Coll Cuchi, Attorney for the Complainant.

Jurat showing the foregoing was duly sworn to by Abelardo de la Haba omitted in printing.

[fol. 5] [File endorsement omitted.]

In District Court of San Juan

Petition for a Preliminary Injunction

Comes now the plaintiff in the above mentioned case and by its attorney respectfully shows:

I. That it has today filed in the office of the clerk of this court a petition for an injunction and other relief against the Municipal Commissioner of Finance of Carolina, to which it refers in support of this preliminary petition as though it formed a part hereof.

II. That pending a definite decision of the said petition by this court after due legal formalities, the defendant will proceed to carry out the provisions of the ordinance mentioned in the original application with serious impairment of the rights of the complainant

and that petitioner has no means of preventing the same other than by the issuance of a preliminary injunction by this court.

III. That inasmuch as the imposition of the tax by said ordinance constitutes an illegal act and causes serious and irreparable injury to the plaintiff, the plaintiff prays that, pending the decision of the original application for injunction filed herein, the court issue a preliminary order of injunction directed to Juan Perez Cami as Municipal Commissioner of Finance of Carolina enjoining him personally or through his agents or employees from carrying out the ordinance which constitutes the subject-matter of the original application, or any of the provisions thereof, and more particularly the provision relative to the collection of the tax of ten cents on each [fol. 6] hundredweight of sugar produced by the plaintiff corporation.

San Juan, P. R., March 17, 1921.

Cay. Coll Cuchi, Attorney for the Plaintiff.

IN DISTRICT COURT OF SAN JUAN

ORDER FOR PRELIMINARY INJUNCTION

Whereas, the Central Victoria, Ltd., an agricultural and industrial corporation organized under the laws of Porto Rico and doing business in this island, has appeared before this court by its attorney, Cayetano Coll Cuchi, and asked for an order commanding the defendant in this case, Juan Perez Cami, Municipal Commissioner of Finance of Carolina, to abstain from all attempts personally, or by his agents, to enforce the ordinance of the Municipal Assembly of Carolina creating a tax on sugar manufactured in the municipality of Carolina beginning with July 1, 1921, and during the fiscal year of 1921-1922, approved on February 17, 1921;

And whereas, in said verified petition it is duly averred that the said ordinance is null and void and without any legal force for the reasons set out in said petition;

And whereas, if such ordinance be really null or improper, the collection of said tax would undoubtedly be prejudicial to the complaining corporation and the ordinary proceeding at law insufficiently speedy to avoid the same;

Now, therefore, be it ordered and declared that you, Juan Perez Cami, Municipal Commissioner of Finance of Carolina, from and after the date of service of this order by the marshal of this court shall abstain from making any effort or attempt, whether personally or by your agents or employees, looking to any enforcement whatever of the provisions of said ordinance, and more particularly the clause referring to the collection of a tax of ten cents on every hundredweight of sugar produced by the complaining corporation; and this preliminary order shall become permanent and definite unless you appear before this court on March 30, 1921, at 9 a. m.,

to show cause why the same should be changed, modified or reversed; [fol. 7] matters to remain as herein decreed pending further order by this court.

Made in San Juan this sevente-nth day of March, 1921.

M. Rodriguez Serra, Judge of the District Court, Section 2.

Attest: Q. Negron Sanjurjo, Secretary.

In District Court of San Juan

Writ of Injunction and Return

To the Marshal of the District Court of San Juan, P. R., Second Section.

Sir: Whereas at an open session of the court held on March 17, 1921, and upon petition of the complainant herein, Judge Manuel Rodriguez made the following order, to wit:

"In the District Court for the Judicial District of San Juan, P. R., Second Section

Civil Case No. —

Central Victoria, Ltd., Complainant,

v.

Juan Perez Cami, Municipal Commissioner of Finance of Carolina, Defendant

Order

Whereas the Central Victoria, Ltd., an agricultural and industrial corporation organized under the laws of Porto Rico and doing business in this island, has appeared before this court by its attorney, Cayetano Coll Cuchi, and asked for an order commanding the defendant in this case, Juan Perez Cami, Municipal Commissioner of Finance of Carolina, to abstain from all attempts personally, or by his agents, to enforce the ordinance of the Municipal Assembly of Carolina creating a tax on sugar manufactured in the municipality of Carolina beginning with July 1, 1921, and during the fiscal year of 1921-1922, approved on February 17, 1921;

And whereas in said verified petition it is duly averred that the said ordinance is null and void and without any legal force for the reasons set out in said petition;

[fol. 8] And whereas, if such ordinance be really null or improper, the collection of said tax would undoubtedly be prejudicial to the complaining corporation and the ordinary proceeding at law insufficiently speedy to avoid the same;

Now, therefore, be it ordered and decreed that you, Juan Perez Cami, Municipal Commissioner of Finance of Carolina, from and after the date of service of this order by the marshal of this court shall abstain from making any effort or attempt, whether personally or by your agents or employees, looking to any enforcement whatever of the provisions of said ordinance, and more particularly the provision referring to the collection of a tax of ten cents on every hundredweight of sugar produced by the complaining corporation; and this preliminary order shall become permanent and definite unless you appear before this court on March 30, 1921, at 9 a. m., to show cause why the same should be changed, modified or reversed; matters to remain as herein decreed pending further order by this court.

Made in San Juan this seventeenth day of March, 1921.

M. Rodriguez Serra, Judge of the District Court, Section 2."

And whereas said order has been duly entered;

Now, therefore, you, the marshal of the District Court for the Judicial District of San Juan, P. R., Section 2, shall, without unwarrantable excuse or undue delay, proceed to make demand upon Juan Perez Cami, Municipal Commissioner of Finance of Carolina, to abstain, personally or by his employees, from any attempt to collect the tax to which the said ordinance refers; and to require him to comply with the said order of the court in all its parts, making due return of service of this writ to the office of the clerk in not less than forty-eight hours.

San Juan, P. R., March 17, 1921.

Q. Negron Sanjurjo, Clerk District Court, Section 2, by Domingo Rivera, Deputy Clerk. (Seal.)

[fol. 9] Certificate of Service

I certify that I received the attached writ on March 18, 1921, at 2 p. m. and that I served the same on that day by proceeding to the town of Carolina, P. R., and thereafter showing this original to Juan Perez Cami, Municipal Commissioner of Finance of Carolina, P. R., and informing him of its contents, I made demand upon him to refrain, in person or by its agents, from making any attempt to enforce the ordinance of the Municipal Assembly of Carolina levying a tax on sugar manufactured in Carolina as and from July 1, 1921, and during the fiscal year of 1921-22, approved February 17, 1921. I personally served true copies of said writ, as well as of the petition for a preliminary injunction and order of the court granting the same, on defendant Juan Perez Cami.

San Juan, P. R., March 18, 1921.

Manuel Nater Girona, Marshal District Court, San Juan, Section 2, by P. del Manzano, Chief Deputy Marshal, Section 1.

[There are seven cancelled Internal Revenue stamps of $1 each.]

IN DISTRICT COURT OF SAN JUAN

ANSWER—Filed March 28, 1921

Comes now the defendant by his undersigned attorney and after demurring to the complaint herein answers it as follows:

I. He admits the facts set out under counts I and II of the complaint save as to the allegation that it is sought to compel the complainant to insert in the statement of its manufactured products the number of bags corresponding to the sugar planters (colonos), which the defendant denies.

II. He denies that the municipal ordinance approved by the Municipal Assembly of Carolina on February 13, 1921, or any other ordinance approved by said assembly, is null and without force or effect, or that the enforcement of said ordinance constitutes an oppressive, unjust or in any way illegal act against the plaintiff or against any other person, natural or juridical.

III. As to paragraph IV of the complaint, the defendant denies: [fol. 10] 1. That the Municipal Assembly of Carolina is not empowered or authorized to impose special taxes not provided for in the Municipal Law as contended in subdivision 1 of count IV of the complaint.

And the defendant alleges, in contravention of the averments contained in said subdivision, that the Municipal Assemblies of Porto Rico, including the Municipal Assembly of Carolina, are tacitly empowered to impose any special tax that may be required for the enforcement of the powers expressly conferred upon them by the said Municipal Law now in force.

2. As to sub-division 2 of count IV of the complaint, defendant likewise denies that the said ordinance approved by the Municipal Assembly of California, referred to in the complaint, constitutes any surcharge whatsoever on the property tax assessable in the municipality of Carolina; and as matter of opposition to the allegations contained in said sub-division 2, the defendant contends that even if said ordinance should constitute a surcharge on the property tax assessable, such tax would not be in excess of one per cent.

3. As to sub-division 3 of said count IV of the complaint, the defendant denies that the tax levied by said ordinance of February 13, 1921, constitutes an export tax on sugar manufactured in the municipality of Carolina or on any other article manufactured in said municipality, or in any other municipality of Porto Rico.

4. As to sub-division 4 of count IV of the complaint, the defendant denies that the said ordinance was made for the purpose of levying a tax on the Central Victoria exclusively or on any other central belonging to the plaintiff or to any natural or juridical person situate in the municipality of Carolina or in any other municipality. The

defendant also denies that said ordinance was made without considering the cost of the sugar production or the conditions regulating competition in the market. And the defendant alleges that the said ordinance levies a tax of ten cents on every hundredweight of sugar manufactured in the municipal district of Carolina irrespectively of the Central Victoria or any other central in operation or [fol. 11] that may be operated in said municipal district. And the defendant further alleges that said tax has been imposed after considering the conditions and cost of the production of sugar as well as all the other conditions and circumstances looking to the levying of a just, fair and uniform tax, under the powers conferred on the Municipal Assembly of Carolina by the Municipal Law in force.

5. As to subdivision 5 of count IV of the complaint, the defendant denies that the said ordinance fails to impose as a basis for the tax assessed the value of the property upon which it is imposed. And the defendant alleges that, for the purpose of the levy of the said tax, it is not necessary to take into account the value of the property paying the same, said tax being an excise tax unanimously adopted by the Municipal Assembly of Carolina upon an article which was not at the time the tax was assessed, and is not now, the object of any federal or insular tax.

6. As to subdivision 6 of count IV of the said complaint the defendant denies that the ordinance referred to in paragraph IV of said ordinance (sic) constitutes a double tax on the property affected by the excise tax imposed or created by the said ordinance. And the defendant contends that even if it did said tax or excise would be lawful, since the power to levy the same is included among the powers conferred upon the Municipal Assembly of Carolina by the said Municipal Law in force.

IV. As to count V of the complaint, the defendant denies that the enforcement of the ordinance can or will cause the plaintiff irreparable or any other injury for the relief of which the plaintiff would not have an adequate and speedy remedy by means of ordinary proceedings. And the defendant contends, in opposition to the allegation in said count of the complaint, that if the effectiveness and enforcement of the ordinance should cause the plaintiff any injury, it has a speedy and adequate remedy by recourse to the ordinary judicial proceedings in force in Porto Rico for the recovery of the losses or damages that said ordinance might cause the plaintiff, in the event that such damages might be incurred.

[fol.12] Wherefore the defendant prays the court, after due proceedings at law have been had, to dismiss the complaint and mulct the plaintiff with the costs, attorney fees and other disbursements incurred herein.

*D*an Juan, Porto Rico, March , 1921.

Juan B. Soto, Attorney for the Defendant.

Jurat showing the foregoing was duly sworn to by Juan Perez Cami omitted in printing.

[fol. 13] IN DISTRICT COURT OF SAN JUAN

PLEADING—Filed April 4, 1921

Comes now the defendant, by his undersigned attorney, for the purpose of showing why the order for a preliminary injunction rendered herein on March 17, 1921, and directed to the defendant in his capacity of Municipal Commissioner of Finance of Carolina, should be annulled.

I. Defendant contends that said order should be set aside for the following reasons:

1. Because the ordinance is legal and valid, having been made under the powers conferred upon municipal assemblies by Act No. 85 of the Legislative Assembly of Porto Rico, approved on July 31, 1919.

(See sections 8 and 9, subdivision 4 of section 26 and subdivision "F" of section 49 of said Act.)

2. Because the ordinance to which said order refers does not constitute a surcharge on the property tax assessable in the municipality of Carolina, since the said ordinance imposes an excise on the manufacture of a commodity which has not been made the subject of any federal or insular tax.

(See subdivision 1 of section 49 of the said Act. Also the judgments of the Supreme Court of Washington, 46 Law Ed. 718, rendered in the case of Patton v. Brady, 46 Law Ed. 713, in which, so far as applicable to this case, it is held:)

"An excise (arbitrio) is: 'An inland duty or impost operating as an indirect tax on the consumer, levied upon certain specified articles as tobacco, ale, spirits, etc., grown or manufactured in the country."

3. Because the tax imposed by said ordinance is not an export tax but an excise levied upon sugar manufactured in the municipality of Carolina.

(See subdivision "F" of section 49.)

4. Because said ordinance is neither unjust nor oppressive but equitable and uniform.

It does not levy any tax that should be based on the value of the property required to carry the same since what it provides for is an [fol. 14] excise and not a direct tax, such excise being levied on the making or manufacture of sugar in the municipal district of Carolina.

And an excise is an indirect tax on the consumer and not a direct tax on property. (Patton v. Brady, 46 Law Edition, 718.)

5. Because the tax levied by the said ordinance is not a double tax since no other analogous tax is collected within the municipal district of Carolina, and because, even if it be conceded that such analogous tax exists, the ordinance would be legal according to the final decision of the Supreme Court of Washington that a general tax and an excise tax may be levied at the same time upon property. (Patton v. Brady, 46 Law Ed. 720.)

6. Because no irreparable injury is caused by the collection of the tax in question since, were the ordinance void, such collection would be of something not due and the amount unduly collected could be recovered in an action brought under section 1796 of the Revised Civil Code or under the provisions of Act No. 35 of March 9, 1911, provided that the proper objection or protest is made at the time of payment.

7. Because under section 1796 of the Revised Civil Code and Act No. 35 of March 9, 1911, there is an adequate ordinary remedy which the plaintiff can avail itself of should the ordinance be really null and void as alleged in the complaint.

II. The defendant is also of the opinion that a reversal of said order lies even on the hypothesis that the ordinance was null and void or that the excise tax created thereby was oppressive and unjust.

1. Because, since there is an adequate remedy in our ordinary procedure, a writ of injunction would not lie even if the statute or the ordinance should be unlawful, unfair or oppressive, since the plaintiff would not have to resort to a multiplicity of actions to enforce any right he might have.

It was so decided by the Supreme Court of the United States of America on different occasions as witness the following excerpts:

"a. The illegality of the tax and the threatened sale of the shares for its payment constitute, of themselves alone, no ground for such [fol. 15] interposition (of an injunction proceeding). * * *

"No court of equity will, therefore, allow its injunction to issue to restrain their action (the action of the officer in charge of collecting the tax) except where it may be necessary to protect the rights of the citizen whose property is taxed, and he has no adequate remedy by the ordinary processes of the law. It must appear that the enforcement of the tax would lead to a multiplicity of suits, or produce irreparable injury. In the cases where equity has interferred, in the absence of these circumstances, it will be found, upon examination, that the question of jurisdiction was not raised, or was waived. Dows v. City of Chicago, 20 Law Ed. (U. S.) 65, 66.

"b. Taxes may be and often are oppressive to the persons and corporations taxed; they may appear to the judicial mind unjust and even unnecessary, but this can constitute no reason for judicial interference. (Supreme Court of the United States of America. Case of Patton v. Brady, 46 Law Ed. 713, 719, 720.)

"c. It has been repeatedly decided that neither the mere illegality of the tax complained of nor its injustice nor irregularity of themselves, give the right to an injunction in a court of equity.

"One of the reasons why a court should not thus interfere, as it would in any transaction between individuals, is, that it has no power to apportion the tax or to make a new assessment, or to direct another to be made by the proper officers of the State. * * * In this manner it may, by enjoining the levy, enable the complainant to escape wholly the tax for the period of time complained of, though it be obvious that he ought to pay a tax if imposed in the proper manner. These reasons, and the weight of authority by which they are supported, must always incline the court to require a clear case for equitable relief before it will sustain an injunction against the collection of a tax. * * * Supreme Court of the [fol. 16] United States, Taylor v. Secor., Miller v. Jessus, Lieb v. Kidder, 23 Law Ed. 663 to 675.

"d. Not only the Supreme Court of the United States (which is more than sufficient to sustain our theory) but the States courts as well have arrived to the same conclusions on different occasions. The following are some among the numerous decisions applicable to the case at bar: Alabama Gold Life Insurance Co. v. Lott, 54 Ala. 499. Burnos v. Atchinson, 2 Kansas, 464. (The matter in question in this case was a municipal tax 'to pay interest upon bond issued for railroad stock and tax levied for street improvement in addition to one levied for general city revenue'.)"

III. Summing up the jurisprudence, we will say: That an extended and careful study of it shows that the theory of law sustained by the authorities, including among them the Supreme Court of the United States, is that when it is sought to restrain the collection of a tax imposed by a State the courts cannot intervene by injunction unless the law imposing the tax is unconstitutional, and that when the tax is imposed by a municipal corporation an injunction can be granted only when it is shown that the tax is not only illegal, but that its collection would cause irreparable damages for the repair of which there is no adequate remedy by ordinary proceedings.

"But so long as the legislation is not colorable merely, but is confined to the enactment of what is in its nature strictly a tax law, and so long as none of the constitutional rights of the citizen are violated in the directions prescribed for enforcing the tax, the legislation is of supreme authority. Taxes may be and often are oppressive to the persons and corporations taxed; they may appear to the judicial mind unjust and even unnecessary, but this can constitute no reason for judicial interference. (Patton v. Brady, 46 Law Ed. (U. S.) 713.)"

In the case of Exchange Bank of Columbus v. Hines, 3 Ohio St. 1, the court denied the injunction because there was an adequate [fol. 17] remedy by ordinary proceedings, notwithstanding the fact that the tax was unconstitutional.

In the cases of Dewitt v. Hayes, 2 Cal. 469; Robinson v. Gaart, 6 Cal. 275, and Merrill v. Gorham, 6 Cal. 41, the Supreme Court of California held that when an illegal tax is imposed there is an adequate remedy by ordinary proceedings and an injunction cannot be be interposed.

In the so-called States Railroads Taxes Cases the Supreme Court of the United States said:

"We do not propose to lay down in these cases any absolute limitation of the powers of a court of equity in restraining the collection of illegal taxes; but we may say, that, in addition to illegality, hardship, or irregularity, the case must be brought within some of the recognized foundations of equitable jurisdiction, and that mere errors or excess in valuation, or hardship or injustice of the law, or any grievance which can be remedied by a suit at law, either before or after payment to taxes, will not justify a court of equity to interpose by injunction to stay collection of a tax." State Railroad Tax Cases, 92 U. S. 614.

In support of what we have said regarding the aforesaid doctrine in so far as it appertains to acts of municipal corporations, we cite the United States Supreme Court case of Dows v. Chicago, 20 Law Ed. 65, to which we have already referred and which has extraordinary importance and application to the case at bar because it treats of a petition for an injunction to restrain the collection of a tax imposed by the City of Chicago upon the capital stock of the Union National Bank of Chicago. The court said:

"The illegality of the tax and the threatened sale of the shares for its payment constitute of themselves alone no ground for such interposition. There must be some special circumstances attending a threatened injury of this kind, distinguishing it from a common trespass, and bringing the case under some recognized head of equity jurisdiction before the preventive remedy of injunction can be invoked."

[fol. 18] IV. Even if there were no such jurisprudence as we have cited, the said order should be set aside.

a. Because subdivisions 3 and 6 of section 4 of our injunction Act, approved March 8, 1906, expressly prohibits it. They read as follows:

"An injunction cannot be granted:

"3. To prevent the execution of a public statute by officers of the law for the public benefit.

"6. To prevent a legislative act by a municipal corporation."

b. Because Act No. 35 of March 9, 1911, positively forbids the issuance of any writ for the prevention of the collection of taxes or revenues. Section 5 of that Act reads as follows:

"Sec. 5. Be it further enacted that no writ for the prevention of the collection of any revenue claimed, or to hinder and delay the collection of the same, shall in any wise issue, either supersedeas, prohibition, or any other writ or process whatever; but in all cases in which, for any reason, any person shall claim that the tax so collected was wrongfully or illegally collected, the remedy for said party shall be as above provided, and none other."

c. Because the plaintiff has not complied with Rule 16 of this court, inasmuch as it has not notified the defendant of its purpose to ask this court or its judge at any fixed date for a continuation of the said order; therefore it should be held that the order lapsed and became without effect ten days after it had been made, or on March 27, 1921.

d. In conclusion, the said order should be set aside because the complaint does not allege facts sufficient to constitute a cause of action for an injunction.

San Juan, Porto Rico, April 4, 1921.

Juan B. Soto, Attorney for the Defendant.

[fol. 19] Jurat showing the foregoing was duly sworn to by Juan Perez Cami omitted in printing.

IN DISTRICT COURT OF SAN JUAN

PETITION TO SET ASIDE ORDER FOR PRELIMINARY INJUNCTION

The petition of the plaintiff in this case that this court order an injunction to issue is based on two conclusions of law:

1. The nullity of the ordinance.

2. The lack of a speedy and adequate remedy in ordinary proceedings to repair whatever damages the execution of the ordinance, if null and void, might cause the plaintiff.

Consequently the issue raised by this suit should be maintained about these two extremes as the axes around whose circumference the whole question revolves.

[fol. 20] In the pleading filed on March 30th in compliance with the rule to show cause issued by this court on March 17th we have set out the reasons on which we base our opinion that a preliminary injunction (and consequently a permanent injunction) does not lie; but not having exhausted all of the jurisprudence which indorses our opinion, we are now going to present simply such arguments and such citations as are not included in the said pleading, and to them we very respectfully call the attention of this Honorable Court.

The plaintiff understands that the tax is void because in its opinion no tax is valid without establishing as a basis for it the valuation of the property; or, in more scientific terms, the plaintiff believes that to be legal every tax should be ad valorem and that no special tax imposed by our municipal assemblies can be valid.

Examining with ordinary care our Municipal Law, especially subdivision 4 of section 26 and subdivision "F" of section 49, the conclusion is unhesitatingly reached that our statutes clearly authorize not only the imposition within certain limits of direct taxes on property, but also the imposition of municipal excises.

Subdivision 4 of section 26 reads: "That the municipal assembly shall have sole authority to levy taxes and excise taxes of any kind."

That is to say that by enacting the said law the municipalities are clearly authorized to impose not only direct taxes based on a previous valuation or assessment of the property, but also to impose excise taxes, or taxes based on a unit of weight, as in the case at bar, or on a unit of measurement. And the only restriction of that authority is that established in said subdivision "F" of section 49.

Then, except in a case in which the object or matter of taxation is also the object or matter of any federal or insular tax, the authority of the Assembly to levy excise taxes is unlimited if it is agreed to by two-thirds of the members of the Assembly.

When the law authorizes the imposition of an excise tax it expressly authorizes a tax without previous assessment of the property, for all [fol. 21] courts and commentators on law agree that an excise tax is not an ad valorem tax, but is almost always special.

We invite the attention of this Honorable Court to the cases cited in the said pleading which is found in the record of this case. And as further authority we now cite the case of the People of the State of New York v. Edward Reardon, decided by the Court of Appeals of the State of New York and reported at page 314 of Volume 8, L. R. A. (N. S.). In that case (page 321, second column) the court said:

"Third. It is claimed that the statute is invalid because it fixes the amount of the tax regardless of the value of the certificates sold or of the sum for which they are sold. The tax in question is an excise tax which need not depend upon any principle of valuation, or on any notice to the taxpayer. It is not a direct tax governed by the rule of appraisement, but an indirect tax governed by the rule of uniformity. It is not like a general tax upon the bulk of property in the state, which must be paid in any event; for if there is no sale there is no tax. Neither notice nor grievance day is required, for no valuation is made except by the statute itself, and there is no provision in either Constitution requiring such a tax to be laid on an ad valorem basis."

As may be seen, in that case the same ground of nullity is invoked as the plaintiff invokes in the complaint. Yet the court held that the tax was an excise tax and therefore did not depend for its validity on any principle of valuation.

Every tax is either special or ad valorem. Excise taxes are almost always special taxes and consequently need not depend for their validity on a previous assessment or valuation of the property. That was undoubtedly the idea which guided the Court of Appeals of New York in holding as it did, and there is no reason why that same principle should not be the guide of this court in deciding the case at bar, for it has been the guide of the Supreme Court of the United States in similar cases.

In order to establish clearly the criterion that the tax imposed [fol. 22] by the aforesaid ordinance is valid, we now have only to answer the following question: Is the tax levied by the said ordinance a direct tax or an excise tax, as we allege?

Only a glance at section 1 of the ordinance is sufficient for any person moderately informed on the principles of taxation to understand that it levies an excise tax, or a special tax of whose nature no doubt can possibly exist.

As may be observed by reading the ordinance, it levies, as said by the New York court in the case cited, an indirect tax governed only the rule of uniformity and not by the rule of appraisement.

The tax is imposed on each quintal of sugar manufactured, that is, the weight is taken as a standard and not the value, it being, therefore, a special or excise tax.

See also the cases cited in the answer to the rule to show cause, filed on March 30th, at page 37 of Volume 26 Ruling Case Law. Also the case of Patton v. Brady (U. S.), 46 Law Ed. 718, cited in the said answer.

As regards the other points at issue, or the second question raised by the plaintiff, we call the attention of the court to the said answer where it cites all authority pertinent to this case and where it specifically confutes all of the grounds of the petition in this case.

Therefore, we repeat the prayer that the order for a preliminary injunction made in this case be set aside, with such other relief as may be proper.

San Juan, Porto Rico, April 19, 1921.

Juan B. Soto, Attorney for the Defendant.

Received copy this nineteenth day of April, 1921.

Cay. Coll Cuchi, Attorney for the Plaintiff.

[fol. 23] IN DISTRICT COURT OF SAN JUAN

STIPULATION TO HEAR CASE ON BRIEFS ALREADY FILED—Filed May 9, 1921

Now come the plaintiff and the defendant by their respective attorneys and show:

That inasmuch as the defendant admits the existence of the ordinance transcribed in the complaint in this case, the parties by

their attorneys have agreed to pray the court to dispose of the objection to the preliminary injunction and the petition for a permanent injunction simultaneously.

To that effect they submit the principal case, or the petition for a permanent injunction, on the briefs already filed in this case and pray this Honorable Court to approve the said stipulation and consequently to consider and decide on the said briefs not only the question relating to the preliminary injunction, but also the question of the permanent injunction.

San Juan, Porto Rico, May 7, 1921.

Cay. Coll Cuchi, Attorney for the Plaintiff. Juan B. Soto, Attorney for the Defendant.

[File endorsement omitted.]

IN DISTRICT COURT OF SAN JUAN

OPINION—June 11, 1921

The Municipal Assembly of Carolina adopted an ordinance on February 17, 1921, providing that on and after July 1, 1921, and for the fiscal year 1921-1922 there should be levied and collected by the Commissioner of Finance a tax of ten cents on each and every quintal of sugar manufactured in the municipal district of Carolina, its collection to be regulated by statements furnished by the respective manufacturers.

The Municipal Commissioner of Finance was authorized to investigate from time to time, either personally or by his employees, and ascertain whether the statements made by the sugar manufacturers were true statements of the number of quintals manufactured. [fol. 24] The collection of the said tax was to be made in any one of the months of February, April or July, 1922. The money so collected was to be used for a technical study of plans of villages which the municipality proposed to develop and of some plans of economical buildings for schools and for residences of teachers in the villages, for the purchase of lands for the villages and the organization of them and of school farms. The ordinance provided also that any person, partnership or corporation who, by false propaganda or insinuations, or by any other malicious or unlawful means, attempts to infringe, or infringes, or causes to be infringed, or who attempts to cause to be delayed, or causes to be delayed, the fulfillment of any of the provisions of the ordinance, should be fined from five to fifty dollars and (sic) imprisoned from five to fifteen days, or both, at the discretion of the court.

In the said ordinance it is not stated who must pay the tax imposed on the sugar,—whether the manufacturer while he may have it in his possession, although he may not be its owner; or the planter of the sugar cane, if he is the owner of the sugar; or the purchaser

of the sugar before it is manufactured, or at the moment of its manufacture, or after it is manufactured and before it is taken from the factory; or any other person.

The plaintiff is a partnership engaged in the manufacture of sugar and alleges in the complaint that by virtue of that ordinance the defendant purposes to collect from it the sum of ten cents on each and every quintal of sugar manufactured by it and attempts to compel it to furnish a statement of its product showing the number of sacks which belong to the factory and the number of sacks which belong to the planters, and, in general, attempts to compel it to comply with each and all of the provisions of the said ordinance. The plaintiff alleges that the ordinance is null and void and without any kind of legal effect for various reasons which we shall discuss presently, praying the court to order that the defendant Municipal Commissioner of Finance of Carolina, personally or through his agents, abstain from all acts tending to effect the collection of the said tax.

[fol. 25] A temporary restraining order was granted and the defendant appeared by his attorney and opposed the complaint generally and the continuation of the temporary restraining order granted by the court. By a stipulation of the parties of May 7, 1921, the case was submitted and the court was requested to dispose of the opposition to the temporary restraining order and the petition for a permanent injunction simultaneously. Hence, the court considers that it is authorized by virtue of that stipulation to decide all of the questions of law raised by the pleadings that may be sufficient for disposing of the case finally. To that effect, of the questions of law raised by the pleadings that may be sufficient for disposing of the case finally. To that effect, of the questions involved the court will examine those that are sufficient for arriving at a final conclusion.

First. It is alleged that the Municipal Assembly of Carolina has no authority to levy a special tax except in the cases enumerated in the Municipal Law. It appears that the ordinance was adopted by the Assembly on the basis of the provisions of sections 8 and 9, subdivision 4 of section 26 and subdivision "F" of section 49 of Act No. 85 of the Legislative Assembly of Porto Rico, approved July 31, 1919.

Section 8 of that Act provides that all expenses incurred by the government of each municipality shall be paid by the municipality, which shall have power to provide such funds as may be necessary therefor in accordance with the provisions of the Act. Section 9 confers upon the municipalities full legislative and administrative powers in all matters of a purely local nature and connected with public works, education, etc., but provides that such powers shall be exercised subject to the laws of Porto Rico and that no ordinance or resolution shall be passed or action taken which in any way conflicts with any of said laws. Subdivision 4 of section 26 provides that the Municipal Assembly shall have sole authority "to levy taxes and excise taxes of any kind." And by subdivision "F"

of section 49 "the municipal revenues shall consist of any other impost, excise or tax that may be levied by two-thirds of the members of the Municipal Assembly, provided the object or matter of [fol. 26] taxation is not also the object or matter of any federal or insular tax." Can a municipal corporation, under the statutes cited, establish a tax of ten cents on each and every quintal of sugar manufactured in the municipality as was done by the ordinance which we are considering?

Among the many definitions which have been given of a municipal corporation we may select two which include the broadest idea in the historical evolution of municipalities from the time of the ancient Roman municipality, conglomerated of citizens of Rome with ample powers of self-government, to the present great cities of our epoch. "A municipal corporation is an agency of the state for the exercise of some of the functions of the government." 82 Am. St. Rep. 52, L. R. A. 814. "A municipal corporation is merely an agency instituted by the sovereign for the purpose of carrying out in detail the objects of the government." Philadelphia v. Fox, 64 Penn. State, 169-180. That idea of the subordination of the municipality to the State is expressly included in the provisions of the Organic Act of Porto Rico, especially in section 3, which provides that "taxes and assessments on property, internal revenue, and license fees, and royalties for franchises, privileges, and concessions may be imposed for the purposes of the Insular and Municipal governments, respectively, as may be provided and defined by the Legislature of Porto Rico." Section 25 provides that all local legislative powers in Porto Rico shall be vested in the Legislature, with no other restrictions than those established by that Act (section 34). And section 37 expressly authorizes the Legislature to create, consolidate and reorganize the municipalities so far as may be necessary, and to provide and repeal laws and ordinances therefor. It is, then, beyond all doubt that as the municipalities are creatures of the State and continuators of its existence by the will of the sovereign, they have only such powers as the State expressly confers upon them.

Referring only to the power to impose taxes, said section 3 of our Organic Act authorizes the Legislature to provide and define taxes and assessment for the purposes of the insular and municipal governments. In a word, any tax that a municipality may desire to [fol. 27] impose must be previously provided and defined by the Legislature of Porto Rico. And not only has that been the law since the enactment of the Jones Act, but it was the law under the Foraker Act. In section 1869 of the Revised Statutes of Porto Rico the Legislature authorized the municipalities to derive their revenues from certain enumerated sources, provided that "no taxes, imposts or excises other than those herein enumerated shall be levied by a municipality, unless expressly authorized by this Act, or by the laws of Porto Rico." Subsequently, by the Act of 1914 authorizing the levy of certain internal revenue taxes, express authorization was given to the municipalities to collect the taxes clearly defined.

We think, therefore, that the power granted under paragraph "F" of section 49 of the new Municipal Law for the collection of "any other impost, excise or tax that may be levied by two-thirds of the members of the municipal assembly, provided the object or matter is not also the object or matter of any federal or insular tax," is subordinate to the general principle recognized by the Legislature prior to the enactment of the Jones Act and expressly reaffirmed in section 3 thereof, to the effect that such tax or assessment "must be provided and defined by the Legislature of Porto Rico." The tax of ten cents on each quintal of sugar provided for by the Municipality of Carolina has not been provided or defined by the Legislature of Porto Rico. No other definition will express it, inasmuch as to define is to determine, to fix, to describe, to characterize, to distinguish with exactness and accuracy.

Second. Supposing that the foregoing interpretation is not correct and that the Legislative Assembly, in delegating powers to the municipalities by virtue of said section 49, granted to them, or could grant to them without infringing the provisions of section 3 of the Organic Act, implicit authority to impose excise taxes of all kinds, and supposing that the tax under consideration is an excise tax and the article taxed was not the object or matter of any other insular tax—a question which we cannot now decide if we adhere [fol. 28] to the record of the case—let us see whether the ordinance is valid from any other point of view.

The tax under consideration was one of ten cents on each quintal of sugar. If that tax is lawful there is no doubt that the Municipality of Carolina could reduce it to five cents or increase it to twenty-five cents at its pleasure and that under the same theory every municipality of the island could do the same. The result would be a manifest infraction of the paragraph of section 2 of the Organic Act which says: "That the rule of taxation in Porto Rico shall be uniform." It is elementary that the constitutional principle of uniformity of taxation in force in Porto Rico and in all of the United States requires identical plans and identical methods in the imposition of taxes, although it does not exact uniformity in the manner of collecting them. Knowlton v. Moore, 178 U. S. 41. If each municipality of Porto Rico, initiating the example of Carolina, should levy a tax which, according to the law invoked, could vary as regards the plan and method; if each municipality should levy a distinct tax on each quintal of sugar and one should exact payment by the manufacturer, another by the owner, another by the merchant who sold it to the consumer, etc., things which could be done under the theory of the municipal assembly in this case, the result would be a violation of the constitutional principle of uniformity. And if some of the municipalities of the island should levy the tax and others should not, the result would be identical. Therefore, the ordinance under consideration is unconstitutional in every light because it does not obey a uniform plan nor a uniform method.

Third. The tax was imposed on each and every quintal of suga manufactured. It is an excise tax, or an occupation tax or a prop erty tax. The Municipal Assembly considers it an excise tax Whatever it is, it is a tax and a part of the lawful internal revenue therefore it is included in the provision of the Organic Act whic we have quoted referring to the uniformity of taxation. If it an occupation tax, that is, a tax that must be paid exclusively b the manufacturer of the sugar and no one else, we must come t the conclusion that it is unlawful because under the Municipal La [fol. 29] the municipality is authorized to levy a tax for the carry ing on of that industry. And is we consider that it is an additiona tax on the property, we must also conclude that it is unlawful, fo it contravenes the same statute (subdivision F of section 49 of th Municipal Law) from which it derives its authority, inasmuch a the municipalities obtain a large part of their revenues from th direct tax on the value of property. The rate of ten cents for eac quintal of sugar would not produce at times the one per cent autho ized by subdivision c of section 2 of Act No. 70 of April 13, 1916, a amended by the Municipal Law, as a permissible surcharge, but w all know and cannot ignore the fact, because it is one of public an notorious knowledge, that the price of sugar manufactured in Port Rico is subject to the fluctuations of the New York market and tha in the course of a year that fluctuation has varied more than 50 per cent, and it might very readily occur than in selling the suga at the rate of five dollars the quintal, which is the present price o it and which the court cannot ignore because it is a public and no torious fact, that surcharge on the value of the sugar is apparentl greater than the one per cent authorized by law as a surcharg From all of these points of view the ordinance is contrary to the law

Fourth. Ten cents per hundredweight of sugar, whether paid b the manufacturer or by the planter, is an arbitrary tax created witl out consideration of the cost of production. It is a fact of genera knowledge that the wages of sugar plantation hands in Porto Ric went up in the short space of two years from seventy-five or eight cents to two dollars and fifty cents or three dollars per day an came down again to one dollar and twenty-five cents or one dolla and fifty cents. A fixed tax of ten cents per hundredweight, with out considering these fluctuations or the aforesaid fluctuations i the market price of the article taxed, is not only arbitrary and op pressive, but also confiscatory and destructive of the industry; an we cannot overlook the fact that at least one-third of the populatio of Porto Rico depend upon the sugar industry for their subsistenc

Fifth. There remains to be decided the question of whether o [fol. 30] not the remedy resorted to by the plaintiff is the prope one. As a question of principle generally, relief by injunctio would not be appropriate. Subdivisions 3 and 6 of section 4 of th Injunction Act of March 8, 1906, provide that "an injunction can not be granted to prevent the execution of a public statute by office of the law for the public benefit or to prevent a legislative act by municipal corporation." Likewise section 5 of Act No. 35 of Marc

9, 1911, provides "that no writ for the prevention of the collection of any revenue claimed, or to hinder and delay the collection of the same, shall in any wise issue," but these statutes cannot be applied to the case of an ordinance which is void and ineffective and apparently infringes the laws in force, particularly the Organic Act, which is the Constitution of Porto Rico, in its provisions regarding uniformity in the imposition of taxes and the exclusive and non-delegatory power of the Legislative Assembly of Porto Rico to levy and define taxes, imposts, licenses, etc., for the support of the insular and municipal governments. In the case at bar the injunction prayed for is the proper remedy. See the decision of the Circuit Court of Appeals of Boston which reversed its own judgment in the case of Camunas v. New York & Porto Rico S. S. Co., 260 Federal. 40, thus affi-ming the judgment of the United States District Court for Porto Rico in that case. See also the recent judgment of the United State Supreme Court in Dawson v. Kentucky Distilleries, etc., Adv. Ops. 326.

For the reasons stated the following judgment is rendered:

This case was submitted for the consideration and final decision of the court by virtue of a stipulation made by the attorneys for both parties and approved by the court; and having duly considered the complaint, the pleading in opposition to the temporary restraining order, the answer to the complaint and the briefs of both parties, for the reasons stated in the foregoing opinion the court sustains the complaint and therefore orders that the defendant, Juan Perez Cami, Commissioner of Finance of Carolina, personally as such Commissioner and by his agents or employees or by any other person under his authority, abstain from an act tending to effect the collection of the tax imposed by the ordinance of February [fol. 31] 17, 1921, adopted by the Municipal Assembly of Carolina and the object of this suit, which is adjudged null and void and without legal effect, with the costs against the defendant.

M. Rodriguez Serra, Judge of the Second Section of the District Court of San Juan.

Attest: Q. Negron Sanjurjo, Clerk.

IN DISTRICT COURT OF SAN JUAN

JUDGMENT—June 11, 1921

This case was submitted for the consideration and final decision of the court by virtue of a stipulation made by the attorneys for both parties and approved by the court; and having duly considered the complaint, the pleading in opposition to the temporary restraining order, the answer to the complaint and the briefs of both parties, for the reasons stated in the foregoing opinion the court sustains the

complaint and therefore orders that the defendant, Juan Perez Cami, Commissioner of Finance of Carolina, personally as such Commissioner and by his agents or employees or by any other person under his authority, abstain from any act tending to effect the collection of the tax imposed by the ordinance of February 17, 1921, adopted by the Municipal Assembly of Carolina and the object of this suit, which is adjudged null and without legal effect, with the costs against the defendant.

Rendered in open court and entered at San Juan, P. R., this eleventh day of June, 1921.

M. Rodriguez Serra, Judge.

Attest: Q. Negron Sanjurjo, Clerk.

(Entered at pages 57 to 59 of judgment docket No. 8 of this court and section.)

In District Court of San Juan

Notice of Judgment

To Attorney Juan B. Soto, San Juan, P. R.:

The undersigned clerk hereby notifies you that the Honorable Court of this district rendered judgment in this case on June 11, 1921, and it was duly entered in the corresponding docket as shown [fol. 32] in the record of this case, where you may inform yourself in detail of the terms of the said judgment.

And you being or representing the party prejudiced by the judgment, for which reason you may appeal from it, I address this written notice to you and have filed a copy of it according to section 2 of the Act of March 9, 1911, to amend sections 92, 123, 227 and 229 of the Code of Civil Procedure.

San Juan, P. R., June 13, 1921.

Q. Negron Sanjurjo, Clerk District Court, Section 2.

I certify that on this date I attached this notice to the record of the case and sent a copy of it to the attorney for the defendants at his residence in San Juan, P. R.

San Juan, P. R., June 13, 1921.

Q. Negron Sanjurjo, Clerk District Court, Section 2.

In District Court of San Juan

Notice of Appeal—Filed June 18, 1921

To the Clerk of the Court and to the Attorney Cayetano Coll y Cuchi, attorney for the plaintiff:

The defendant by his undersigned attorney notifies you that he hereby takes an appeal to the Supreme Court of Porto Rico from

the judgment rendered in this case by the above-mentioned District Court.

San Juan, Porto Rico, June 18, 1921.

Juan B. Soto, Attorney for Defendant-Appellant.

Received copy this eighteenth day of June, 1921.
Cay. Coll Cuchi, Attorney for Plaintiff-Appellee.

[File endorsement omitted.]

[fol. 33] IN DISTRICT COURT OF SAN JUAN

STIPULATION RE TRANSCRIPT OF RECORD

We, Cayetano Coll y Cuchi and Juan B. Soto, attorneys for the plaintiff-appellee and the defendant-appellant respectively, for the purposes of the appeal taken in this case,

Certify that the foregoing is a true and exact copy of the whole record and judgment-roll in civil action No. 2300 brought in the District Court for the Judicial District of San Juan, Section 2, by Central Victoria, Ltd., as plaintiff, against Juan Perez Cami, Municipal Commissioner of Finance of Carolina, as defendant, and necessary for the purposes of this appeal.

We certify also that no statement of the case has been prepared because no evidence was examined, as appears from the stipulation transcribed on pages 37 and 38 of the foregoing transcript.

San Juan, Porto Rico, June 20, 1921.

Cay. Coll Cuchi, Attorney for Plaintiff-Appellee. Juan B. Soto, Attorney for Defendant-Appellant.

Received copy this twenty-second day of June, 1921.
Cay. Coll Cuchi, by Gust. Cruzado Silva, Attorney for Plaintiff-Appellee.

IN SUPREME COURT OF PORTO RICO

No. 2507

CENTRAL VICTORIA, LTD., Plaintiff and Appellee,

v.

JUAN PEREZ CAMI, Municipal Commissioner of Finance of Carolina, Defendant and Appellant

Appeal from the District Court of San Juan, Section 2

OPINION—April 28, 1922.

Mr. Justice WOLF:

The Municipality of Carolina passed an ordinance whereby it imposed a tax of ten cents on every hundredweight of sugar manufactured in the municipality. The court below held the ordinance invalid on various grounds. The appellant has filed an assignment [fol. 34] of errors, but improperly in that assignment also outlines the argument. The outline of the argument might be contained in an index to the brief or at the beginning of the discussion of each error, but the assignment of errors should contain nothing but the errors in their absolute form.

The first assignment of error is that the ordinance is unconstitutional because in violation of section 3 of the Organic Act. We have elaborately discussed this question in the case of Fantauzzi v. Municipal Council, ante, p. —, and we have freely used brief of counsel for appellant.

The second assignment of error relates to the alleged lack of uniformity. We have also discussed this in the Fantauzzi case, supra, and decided that an excise tax like the one before is not invalid on this account.

The third assignment of error involves the question whether this tax has already been covered by any insular tax. This question we also discussed in the Fantauzzi case, supra. Appellant also maintains that the power to impose a license tax was granted to the municipalities, but that there was no showing that the municipality in this case had exercised the power. Indeed appellant implies that it had not used the power. There is force in appellant's argument, but we prefer to base our decision on the more general lines of the Fantauzzi case.

The fourth assignment of error is concerned with the nature of the tax, whether a property tax or not and hence double or prohibited.

That this should be considered as a tax on the process of manufacturing and not a tax on property as such is an object of our discussion in Fantauzzi v. Municipal Council, supra. As shown therein, even when articles manufactured are taxed as such the tax is supposed to fall on the occupation, manufacture or business and not on

property. Patton v. Brady, 184 U. S. 608; Stratton's Independence v. Howbert, 231 U. S. 399, 414, and cases.

In his fifth assignment of error appellant discusses the alleged unreasonableness of the ordinance. The court implies that the ordinance would be confiscatory, but no such showing was made. We [fol. 35] are not satisfied with the reasoning of the court in this regard. The court says: "Ten cents per hundredweight of sugar, whether paid by the manufacturer or by the farmer, is an arbitrary tax, created without consideration of the cost of production. It is a fact of general knowledge that the wages of sugar plantation hands in Porto Rico went up, in the short space of two years, from seventy-five or eighty cents to two dollars and fifty cents or three dollars per day, and came down again to one dollar and twenty-five cents or one dollar and fifty cents. A fixed tax of ten cents per hundredweight, without considering these fluctuations or the above mentioned fluctuation in the market price of the article taxed, is not only arbitrary and oppressive but also confiscatory and destructive of the industry; and we cannot overlook the fact that at least one-third of the population in Porto Rico depends upon the sugar industry for its maintenance." The courts cannot anticipate the variations in the sugar market and complainant, as we have indicated, would have to show that the rate was oppressive or excessive, or even confiscatory.

The sixth alleged error relates to the question whether injunction is the proper remedy in a case of this kind. The court below seems disposed to admit that ordinarily an injunction would not lie to review a municipal ordinance, but holds that injunction would lie when the ordinance was unconstitutional. The municipal law of 1919, laws of that year, page 722, perhaps leaves the question a little in doubt, although section 65 (b) would expressly only permit an injunction when the ordinance infringed constitutional rights, but not to test the validity in general. Such a right would seem to be given by means of a certiorari under section 65 (a). We incline to the view that injunction does not lie especially, as it would seem to be prohibited by the injunction laws of 1906. In any event as we have held that the ordinance was constitutional the writ would not lie.

The court, besides, in its opinion says that the ordinance is not clear inasmuch as it does not say who should pay the tax, whether the colono or the owner of the mill. But the ordinance says that ten cents shall be collected on every hundredweight of sugar manufac- [fol. 36] tured and we decide that prima facie it is the manufacturer who must pay the tax.

Finding no reason why this ordinance should be declared unconstitutional or void the writ in this case did not lie and the order must be reversed and the bill dismissed without costs.

Adolph G. Wolf, Associate Justice.

IN SUPREME COURT OF PORTO RICO

JUDGMENT—April 28, 1922

For the reasons stated in the foregoing opinion this court decides that it should reverse, *as* does hereby reverse, the judgment appealed from rendered by the District Court of San Juan, Second Section, on June 11, 1921; and to annul, as does hereby annul, the writ issued in this case, and therefore dismisses the complaint, without special imposition of costs. Let this judgment be duly communicated.

So we command, pronounce and sign.

Emilio Del Toro, Adolph G. Wolf, Pedro De Aldrey, H. M Hutchison.

IN SUPREME COURT OF PORTO RICO

PETITION FOR APPEAL—Filed June 19, 1922

The complainant herein, Central Victoria, Ltd., feeling itself aggrieved by the decree entered by the said court on the twenty-eighth day of April, 1922, whereby it was decreed that the tax of ten cents on each quintal of sugar manufactured within the Municipality of Carolina, as imposed by the said municipality, was constitutional; now comes by its solicitor and attorney, Cay. Coll Cuchi, Esq., and petition the said court for an order allowing said complainant to prosecute an appeal from said decree to the Honorable United States Circuit Court of Appeals for the First Circuit under and according to the laws of Congress and the Statutes of the United States in such cases made and provided, and also that an order be made [fol. 37] fixing the amount of security which complainant shall give and furnish upon such appeal, and that upon the giving of such security all futher proceedings in this court be suspended and stayed until the determination of said appeal by the said United States Circuit Court of Appeals for the First Circuit.

Cay. Coll Cuchi, Attorney for Complainant.

IN SUPREME COURT OF PORTO RICO

ASSIGNMENT OF ERRORS—Filed June 19, 1922

I. The court erred in holding that the ordinance of the Municipal Council of Carolina of February 17, 1921, was constitutional and not in violation of section 3 of the Organic Act of Porto Rico.

II. The court erred in holding that the said ordinance of the Municipal Council of Carolina imposed a tax uniform within the constitutional limitations providing that all taxes must be uniform.

III. The court erred in holding that the tax imposed by the said ordinance of the Municipal Council of Carolina was not upon a subject of taxation already covered by an insular tax.

IV. The court erred in holding that the tax imposed by the said municipal ordinance of Carolina was not a tax on property.

V. The court erred in holding that the said municipal ordinance of Carolina does not impose a tax which is unreasonable and of a confiscatory nature.

VI. The court erred in reversing the judgment of the District Court of San Juan and dismissing the bill.

Cay. Coll Cuchi, Attorney for the Appellant in Error.

IN SUPREME COURT OF PORTO RICO

ORDER ALLOWING APPEAL—June 30, 1922

An appeal is allowed by the plaintiff, Central Victoria, Ltd., to the Circuit Court of Appeals for the First Circuit of the United [fols. 38-40] States from the judgment rendered by this court in the above-entitled case on April 28, 1922; and the bond to be given by the said appellant within the time allowed by law is fixed at the sum of fifteen thousand and seven hundred dollars ($15,700) for the suspension of the execution of the judgment and three hundred dollars ($300) to respond for the costs which the said appeal may cause the adverse party; and the appellant is granted a period of sixty days for preparing and translating the record which must be sent up to the said Circuit Court of Appeals for the First Circuit of the United States.

It is so ordered and signed by the Honorable Emilio del Toro, Chief Justice of the Supreme Court.

Emilio Del Toro, Chief Justice.

Attest: Joaquin Lopez, Secretary-Reporter.

IN SUPREME COURT OF PORTO RICO

ORDER AMENDING ORDER FOR BONDS—July 3, 1922

At the request of plaintiff-appellant this court hereby amends its order of June 30, 1922, to the effect that the bonds required in security of the damages and costs that the suspension of the execution of the judgment of this court and the appeal taken in this case may cause the adverse party may be furnished in a single document.

The court so ordered and the Chief Justice signs.

Emilio Del Toro, Chief Justice.

Attest: Joaquin Lopez, Secretary-Reporter.

BOND ON APPEAL FOR $16,000—Approved and filed; omitted in printing

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[fol. 41] IN SUPREME COURT OF PORTO RICO

WRIT OF SUPERSEDEAS

UNITED STATES OF AMERICA, ss:

The President of the United States, the People of Porto Rico, to Hon. Manuel Rodriguez Serra, Judge of the District Court of San Juan, Second Section:

Whereas, attorney Cayetano Coll y Cuchi, in the name of Central Victoria, Ltd., has appealed to the Circuit Court of Appeals, First Circuit of the United States, from the judgment rendered by the Supreme Court of Porto Rico, on the twenty-eighth day of April, 1922, in the above-entitled case, and at the same time moved that the amount of the security be fixed for the suspension of the execution of the judgment in the said case pending the prosecution and consideration of the said appeal;

Whereas, the Hon. Emilio del Toro, Chief Justice of the Supreme Court of Porto Rico, by his order of June 30, 1922, allowed the said appeal and fixed at fifteen thousand and seven hundred dollars ($15,700) the amount of the security to be given by the plaintiff-appellant to respond for the damages which the defendant-appellee might suffer by reason of the appeal and to obtain the suspension of the execution of the judgment, fixing also at three hundred dollars ($300) the amount of the security to be given by the said appellant, Central Victoria, Ltd., to answer for the costs which the appeal might cause the defendant and appellee;

Whereas, the Supreme Court under date of July 3, 1922, and at the request of plaintiff-appellant amended its order of June 30, [fol. 42] 1922, to the effect that the bonds required for the security of the damages that the suspension of the execution of the judgment may cause the appellee, and for costs, might be presented in a single document;

Whereas, the plaintiff-appellant, Central Victoria, Ltd., on July 3, 1922, offered the said security which was given by Central Victoria, Inc., through Gabriel Soler, treasurer, as principal, and Pedro Giusti and Luis Rubert, as sureties, which was approved by the Supreme Court by its order of July 3, 1922, this Supreme Court ordering that the execution of its judgment in this case of April 28, 1922, be suspended and also that a writ of supersedeas to that effect be issued:

Wherefore, in compliance with the said order, you, Hon. Manuel Rodreguez Serra, Judge of the District Court of San Juan, Second District, are hereby commanded to suspend the execution of the judgment rendered in this case on April 28, 1922.

Present the Honorable Emilio del Toro, Chief Justice of the Supreme Court of Porto Rico.

In testimony of which I issue this writ in duplicate under my gnature and the seal of the court at San Juan, Porto Rico, this th day of July, 1922.

Joaquin Lopez, Secretary-Reporter. (Seal.)

SUPREME COURT OF PORTO RICO, MARSHAL'S OFFICE

Received this writ on its date and served the same by delivering true copy thereof to Honorable Manuel Rodriguez Serra, Judge the District Court of San Juan, Second District, at his office, in n Juan, Porto Rico, this sixth day of July, 1922.

S. C. Bothwell, Marshal.

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ol. 43] CITATION—In usual form, showing service on Juan Perez Cami, omitted in printing

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ol. 44] IN SUPREME COURT OF PORTO RICO

ORDERS EXTENDING TIME

September 1, 1922.

Upon motion duly made by appellant, Central Victoria, Ltd., e time for filing in the United States Circuit Court of Appeals r the First Circuit of the transcript of the record in this case is reby extended until November 2, 1922.

It was so ordered and signed by the Hon. H. M. Hutchison, sociate Justice of the Supreme Court, sitting.

H. M. Hutchison, Associate Justice.

Attest: Felipe Janer, Jr., Acting Secretary.

November 1, 1922.

Upon motion duly made by appellant the time for filing in the nited States Circuit Court of Appeals for the First Circuit of the nscript of the record in this case is hereby extended until ecember 31, 1922.

It was so ordered and signed by the Hon. H. M. Hutchison, sociate Justice of the Supreme Court, sitting.

H. M. Hutchison, Associate Justice.

Attest: Joaquin Lopez, Secretary-Reporter.

A true copy.

Joaquin Lopez Cruz, Secretary-Reporter, by Felipe Janer, Jr., Deputy-Secretary.

ol. 45] Translator's Certificate

I, Felipe Janer, Jr., Official Interpreter and Translator of the preme Court of Porto Rico, do hereby certify:

That the foregoing is a true and faithful translation of their respective originals as they appear on file and of record in this case.

In testimony whereof, I have signed this certificate, in the city of San Juan, Porto Rico, this fifteenth day of January, 1923.

Felipe Janer, Jr., Interpreter and Translator of the Supreme Court of Porto Rico.

Order—December 29, 1922

Upon motion duly made by appellant the time for filing in the United States Circuit Court of Appeals for the First Circuit of the transcript of the record in this case is hereby extended until January 30, 1923.

It was so ordered and signed by the Hon. Adolph G. Wolf, Acting Chief Justice of the Supreme Court.

Adolph G. Wolf, Acting Chief Justice.

Attest: Felipe Janer, Jr., Acting Secretary.

In Supreme Court of Porto Rico

Clerk's Certificate

I, Joaquin Lopez Cruz, Secretary-Reporter of the Supreme Court of Porto Rico, do hereby certify:

That the foregoing papers and proceedings had in the above-entitled case are true and faithful copies of their respective originals as the same appear on file and of record in this office and embodied in the transcript by the appellant; I further certify, that the translation of said papers and proceedings has been revised by the official interpreter and translator of the Supreme Court, [fol. 46] as shown by his certificate hereto attached and made a part of this transcript.

In testimony whereof, I have hereunto set my hand and affixed the seal of this court, in the City of San Juan, Porto Rico, this fifteenth day of January, 1923.

Joaquin Lopez, Secretary-Reporter of the Supreme Court of Porto Rico. (Seal.)

[Attached hereto are cancelled excise tax stamps amounting to $29.]

[fol. 47] In United States Circuit Court of Appeals

Opinion—February 5, 1924

Per Curiam:

This case is governed by our opinion in No. 1617, Successors of C. & J. Fantauzzi v. Municipal Assembly of Arroyo, Porto Rico, and the entry should be:

The judgment of the Supreme Court of Porto Rico is reversed with costs to the appellant in this court, and the case is remanded to that court for further action not inconsistent with this opinion.

IN UNITED STATES CIRCUIT COURT OF APPEALS

FINAL DECREE—February 5, 1924

This cause came on to be heard October 16, 1923, upon the transcript of record of the Supreme Court of Porto Rico, and was argued by counsel:

Upon consideration whereof, It is now, to wit, February 5, 1924, here ordered, adjudged and decreed as follows: The judgment of the Supreme Court is reversed, with costs to the appellant in this court, and the case is remanded to that court for further action not inconsistent with the opinion passed down this day.

By the Court.

Arthur I. Charron, Clerk.

IN UNITED STATES CIRCUIT COURT OF APPEALS

CLERK'S CERTIFICATE

I, Arthur I. Charron, Clerk of the United States Circuit Court of Appeals for the First Circuit, certify that the printed pages numbered 1 to 47, inclusive, hereto prefixed, contain and are a true copy of the record and all proceedings to and including March 12, 1924, in the cause in said court numbered and entitled No. 1609, Cen-[fol. 48] tral Victoria, Ltd., Plaintiff, Appellant, v. Juan Perez Cami, Municipal Commissioner of Finance, Defendant, Appellee.

In testimony whereof, I hereunto set my hand and affix the seal of said United States Circuit Court of Appeals for the First Circuit, at Boston, in said First Circuit, this twelfth day of March, A. D. 1924.

Arthur I. Charron, Clerk. (Seal of the United States Circuit Court of Appeals, First Circuit.)

IN SUPREME COURT OF THE UNITED STATES

On Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the First Circuit

ORDER GRANTING PETITION FOR CERTIORARI—Filed June 2, 1924

On consideration of the petition for a writ of certiorari herein to the United States Circuit Court of Appeals for the First Circuit and of the argument of counsel thereupon had,

It is now here ordered by this Court that the said petition be, and the same is hereby, granted, the record already on file as an exhibit to the petition to stand as a return to the writ.